

35-710 *Conditions Applicable*

Any conditions attached to any rezoning, Specific Use Permit, variance, use permitted by City Council review, or any other Permit or Development Order issued under any previously enacted zoning regulations, subdivision, regulations, or Unified Development Code, shall continue to apply to the proposed use and shall be enforceable as provided in Division 11 of Article 4 of this Chapter. Such conditions may be waived if an Application is approved pursuant to this Chapter whereby the Applicant agrees to waive and abandon all rights secured under the regulations formerly in effect.

Division 2 *Vested Rights*

Commentary: Any project which obtain a "development permit" pursuant to the provisions of Ordinance No. 86715, passed and approved September 25, 1997, shall continue to fall under the purview of said Ordinance the adoption of this chapter notwithstanding.

35-711 *Common law, statutory and consent agreement rights*

(a) *Applicability*

The provisions of this Section apply to any Application for Development Approval in which the Applicant claims an exemption from any provision of this Chapter based on common law or statutory vested rights.

(b) *Criteria*

(1) *Common law vested rights.*

Common law vested rights shall be acknowledged by the Director after consultation with the City Attorney if the applicant for common law vested rights does not demonstrate entitlement to statutory vested rights as provided in subsection (2), below. A request for such an acknowledgement must include documents establishing the criteria listed below together with an application review fee in the amount of One Hundred Forty Five Dollars (\$145.00) to offset the City's costs. The Director may request additional relevant material prior to issuing the acknowledgement. The applicant for common law vested rights must show compliance with the following criteria for the specific project to acquire such rights.

- A. In reliance upon properly issued permits or approvals the applicant make substantial financial commitments or assumed substantial financial obligations within the purview of the activities authorized by said permit or approval; and
- B. The applicant has proceeded in good faith, and no approvals or permits have lapsed or been revoked; and

- C. The applicant has established any other factor which may establish vested rights under State or Federal law.

(2) Statutory Vested Rights.

No Vested Rights Determination claiming entitlement to approval of an Application for Development Approval shall be approved or issued unless the Applicant has demonstrated compliance with the following criteria for statutory vested rights, unless the applicant demonstrates entitlement to common law vested rights as provided in subsection (2, above):

- A. The Applicant used its property or filed an application as provided in Texas Local Government Code § 43.002 prior to annexation, and that the regulations against which vested rights are claimed are not subject to an exemption as provided in Texas Local Government Code § 43.002(c).
- B. The Applicant filed an application as provided in Texas Local Government Code chapter 245 prior to adoption of the regulations against which vested rights are claimed, that the regulations against which vested rights are claimed are not subject to an exemption as provided in Texas Local Government Code § 245.004 and that the project has not become dormant as defined in Texas Local Government Code § 245.005 and this Chapter.

(c) Consent Agreements.

Any Applicant for a Vested Rights Determination may apply for Consent Agreement Approval provided that the requirements of subsection (d) of this Section are satisfied or the required approval is for one (1) or more, but less than all phases of the proposed development. An application for Consent Agreement Approval may be approved subject to compliance with a Consent Agreement. An Application for approval of a Consent Agreement Approval may be filed concurrent with an Application for a Vested Rights Determination, or at any time prior to a final decision relating to an Application for a Vested Rights Determination by the City Attorney or the Board of Adjustment.

(d) Terms and conditions

A Consent Agreement shall be signed by the City Attorney and the Applicant and shall include the following terms and conditions:

- (1) A legal description of the subject property and the names of the legal and equitable owners;
- (2) The duration of the consent agreement and the conditions that will result in revocation;
- (3) The uses permitted on the property, including population densities and/or building intensities and height;
- (4) A description of the public facilities that will service the proposed development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure that public facilities are available concurrent with the impacts of the development;
- (5) A description of any preservation or dedication of land for public purposes;

- (6) A description of all development approvals, permits, or other local or State approvals needed for the proposed development;
- (7) A finding that the proposed development is consistent with the Master Plan and the relevant provisions of this Chapter;
- (8) A description of any conditions, terms, restrictions, or other requirements determined to be necessary for the preservation and protection of the public health, safety, or welfare;
- (9) A statement indicating that the omission of a limitation or restriction shall not relieve the Applicant of the necessity of complying with all applicable local, state and federal laws;
- (10) A phasing plan indicating the anticipated commencement and completion date of all phases of the proposed development; and
- (11) A statement that the City Attorney shall review progress pursuant to the consent agreement at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the consent agreement.

(e) *Failure to comply with consent agreement*

If the Board of Adjustment finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the consent agreement, the consent agreement may be revoked or modified by the Board of Adjustment after a public hearing which has been noticed by publication, and for which notice has been expressly provided to the Applicant.

35-712 *Recognition of Vested Rights Derived From Texas Local Government Code Chapter 245*

(a) *Purpose.*

This section provides a methodology for the registration of permits, and permit applications, with the Department of Planning so that a determination can be made as to whether the permit, or permit application is one that would afford a project with the "vested rights" as provided in Chapter 245 and § 43.002 of the Texas Local Government Code. The purpose for such registration and determination is to assist City Staff in their review of the applicability of Chapter 245 or § 43.002 to a particular project. This section shall not apply to a claim of right under common law, a federal or state statute, other than Chapter 245 or § 43.002, or the state or federal constitutions. Any claim of right made under some law or authority, other than Chapter 245 or § 43.002, should be made to the director in writing. The director shall advise the City Attorney of the claim who shall make a determination of the validity of the claim within 20 days of its receipt by the City. Additionally, as provided in subsection (g) of this section, this section shall not apply to the types of ordinances, or other governmental action, enumerated in VTCA Local Government Code § 245.004 or exempt from § 43.002.

(b) *Vested rights recognition process.*

(1) *Initiation*

An application may be made to the director of planning for recognition of vested rights for a particular project by completion of a form provided by the planning department that indicates which permit or permits are being relied on by the applicant for establishment of vested rights. The applicant for vested rights recognition shall provide the planning department with a

completed application together with a permit application review fee in the amount of one hundred forty-five dollars (\$145.00) and two (2) copies of any documents on which the applicant is relying to establish vested rights.

(2) Review and Approval

After receiving an application for vested rights recognition, the planning department shall review the application and approve, deny or request additional information to be provided for consideration of the application within twenty (20) working days. Should the permit, which is the basis for vested rights recognition, have been issued by a governmental agency other than the City the planning department shall request the office of the City Attorney to determine whether the permit establishes rights under Chapter 245. In the event the planning department does not respond to an application for vested rights within twenty (20) working days, the application will be considered denied. Provided, however, the time period may be extended upon the written request of the applicant. Upon review of the application, if the planning department finds that the applicant has provided sufficient information to establish that one (1) or more permit(s) exists on a project, they shall issue a certificate to the applicant recognizing vested rights for the project. The certificate recognizing vested rights shall be dated and signed by the individual reviewing the application. The planning director shall also review all certificates prior to issuance. The certificate shall also clearly indicate the term and conditions (indicated above) required for the continuance of the vested rights being recognized. In the event the planning department requests additional information for consideration of an application, the applicant shall be notified in writing within the required time period of specifically what information must be submitted in order to complete the review of the application. Should application be denied the planning department shall enumerate in writing any and all reasons for such denial, which shall be delivered to the applicant within the time period allowed for review.

(c) Recordation

The planning department shall create a file of all certificates issued pursuant to this provision that will be available to the public during regular business hours. At a minimum the file should contain all certificates issued for a three-calendar year period and should be reviewed annually to remove certificates more than three (3) years old. Certificates more than three (3) years old shall be made available in conformance with the Public Information Act.

(d) Vested rights recognition process appeal.

In the event an applicant for recognition of vested rights is aggrieved by an action taken regarding the recognition of those rights or the application of the above requirements, the applicant may appeal the decision of the planning department staff to the planning commission by filing a request for appeal with the planning director within fifteen (15) calendar days from the date the applicant is notified of the adverse decision or action taken under these requirements. The application for appeal shall be made in writing and shall contain the applicant's rationale for requesting the appeal. The planning director shall place the appeal on the agenda of the planning commission and the planning commission shall hold a hearing on the appeal and make its ruling within forty-five (45) days from the date the request for appeal was filed. If the planning commission denies all or part of the relief requested in the appeal, the applicant may make a final appeal to the city council by filing a notice of final appeal in writing together with payment of seventy-five dollars (\$75.00) to offset the city's costs with the office of the city clerk no later than the tenth (10) day following the party's receipt of the written decision of the planning commission from which the final appeal is brought. The city clerk shall schedule the hearing of the final appeal at the earliest regularly scheduled meeting of the city council which will allow compliance with the requirements of the Texas Open Meetings Act. The decision of the city council shall be final.

(e) Variance.

An individual, or business entity, that has vested rights may request a variance from the time limit, required action, or term, that would otherwise cause the vested rights to expire. An individual requesting a variance must make written application to the director of planning and pay a variance application fee in the amount of one hundred forty-five dollars (\$145.00). The request for variance must identify the specific provisions for which a variance is being requested and the reasons the applicant feels justify the granting of the variance. The director of planning shall review the application for variance and provide a written recommendation with regard to whether the variance should be granted, conditionally granted or denied to the planning commission within thirty (30) days from the date the application or variance is filed. In the event the planning commission fails to make a ruling on the variance within sixty (60) days from the date the application for variance is filed, the application for variance shall be deemed denied. Provided, however, the time period may be extended upon the written request of the applicant. In order to grant a variance from the provisions of this section, the planning commission must find, that:

- (1) The applicant would suffer a hardship in the absence of a variance that is not the result of the applicant's own negligence; and
- (2) The applicant has been actively attempting to pursue and complete development of the project that is the subject of the vested rights; and
- (3) Compliance with rules and regulations passed after the recognition of vested rights would cause a substantial economic hardship to the developer/property owner that would preclude the capability of completing the project in a reasonable and prudent manner.

(f) Variance appeal.

If the planning commission denies all or part of the relief requested in a request for variance, the applicant may make an appeal to the city council by filing a notice of appeal in writing together with a payment of seventy-five dollars (\$75.00) to offset the city's costs with the office of the city clerk for the city no later than the tenth (10) day following the party's receipt of the written decision of the planning commission from which the final appeal is brought. The city clerk shall schedule the hearing of the appeal at the earliest regularly scheduled meeting of the city council which will allow compliance with the requirements of the Texas Open Meetings Act. The decision of the city council shall be final.

(g) Exemption from vested rights

The types of ordinances enumerated in VTCA Local Government Code § 245.004 are exempt from this section and will apply to a project or development regardless of the effective date of the ordinance or the existence of vested rights for the project.

- (1) Future ordinances: Any ordinance that: concerns the development of real property and is adopted after the adoption of this Chapter, which incorporates this section into the City Code of Ordinances, may specifically state whether it is the type of ordinance that is exempted by § 245.004. However, the absence of such a statement shall not be determinative as to whether an the ordinance is or is not exempted.
- (2) Existing ordinances: This section shall not be applicable to any ordinance that: concerns the development of real property; as adopted prior to the adoption of this chapter and is exempted by § 245.004 from the protection provided by Chapter 245.
- (3) Determination by City Attorney: Should a question arises as to whether an Ordinance is exempted from Chapter 245 the Director of Planning shall request an opinion from the Office of the City Attorney.

(h) Duration

This section shall not extend the time of validity for any permit. Any rights recognized by the application of this section shall not extend beyond the time periods prescribed for the validity of the permit or permits that were submitted for recognition except by the granting of a variance from the time limit as provided herein.

(i) Voluntary Compliance

Nothing herein would prohibit the voluntary compliance with any future ordinance, regulation or incentive.

(j) Previously issued certificates.

Nothing herein shall affect the validity of any vested right which was recognized pursuant to Ordinance No. 86715, passed and approved September 25, 1997.

(k) Chapter 245 of Texas Local Government Code adopted.

Chapter 245 of the Texas Local Government Code, as adopted in 1999 by the 76th Legislature, Regular session hereby adopted and incorporated by reference herein. Should Chapter 245 be repealed by the Legislature it shall remain effective as part of this Code for one year from the date of such repeal. During said period City Council shall take action it deems necessary to provide municipal protection for ongoing projects from the affects of unanticipated subsequent regulations.

35-713 Dormant Projects**(a) Purpose**

The purpose of this Section is to provide an expiration date for Permits approved prior to this Chapter which lack an expiration date, as provided in Texas Local Government Code § 245.005.

(b) Applicability

The provisions of this section apply to any Permit if as of the first anniversary of the effective date of Chapter 245 of the Texas Local Government Code: (i) the permit does not have an expiration date; and (ii) no progress has been made towards completion of the project, as defined in Texas Local Government Code § 245.005.

Commentary: Texas Local Government Code § 245.005 defines "progress towards completion" as any of the following: (1) an application for a final plat or plan is submitted to a regulatory agency; (2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project; (3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located; (4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or (5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

(c) Expiration of Dormant Projects

A dormant project, as defined in subsection (b), above, shall expire on one of the following dates, whichever comes later:

- (1) May 11, 2004 (the fifth anniversary of the effective date of Chapter 245 of the Local Government Code); or
- (2) The expiration date established by applying the subsection entitled "Scope of Approval" in the regulations pertaining to the Permit as established in Article 4; or
- (3) The expiration date for a Permit subject to § 35-711 of this Article for any eligible Permit as set forth in § 35-711(a).

Division 3 Transitional Provisions

35-720 *Existing special use permits.*

Note: prior to the adoption of this section, the procedure used in this section was referred to as a "special use permit."

Special use permits granted prior to the effective date of Ordinance No. 91202 shall remain in place and shall be subject only to the conditions and criteria in place at the time that they were originally granted. Special use permits granted prior to the effective date of this Chapter may not be extended or modified. Extension or modification of an existing special use permit shall require consideration as a new special use permit.

35-721 *Impact Fees*

(a) *Protection of prior rights.*

This section protects prior rights established for certain properties which have been platted or replatted and recorded prior to the effective date of this article. Such protection of prior rights in the form of an exemption from the requirement to pay an impact fee is applicable to properties which, prior to the effective date of this article, met all the following criteria:

- (1) The property had been platted/replatted and recorded in accordance with Chapter 212 of the Local Government Code.
- (2) The property had met all city code requirements applicable to sewer service in effect at the time sewer service was granted to the property.
- (3) The property had paid all sewer fees and/or impact fees in effect at the time sewer service was granted to the property.
- (4) If applicable, a sewer service contract had been executed covering such property.

(b) *Properties replatted after effective date of this Chapter*

(b) Properties replatted after effective date of this Chapter

This section protects prior rights established for certain properties which are to be replatted after the effective date of this article. Such protection of prior rights in the form of an exemption from the requirement to pay an impact fee is limited to the EDU equivalent of the amount of gallons of flow or the number of EDUs set out in the board's application for sewer service, or an amount not to exceed five (5) EDUs per acre, whichever is greater. Should the board's application for sewer service reflect an EDU amount less than five (5) EDUs per acre, the exemption shall equal the lesser amount. This exemption is applicable to properties which, prior to the effective date of this article, met all the following criteria:

- (1) The property had been platted/replatted and recorded in accordance with Chapter 212 of the Local Government Code.
- (2) The property had met all city Code requirements applicable to sewer service in effect at the time sewer service was granted to the property.
- (3) The property had paid all sewer fees and/or impact fees in effect at the time sewer service was granted to the property.
- (4) If applicable, a sewer service contract had been executed covering such property.

If, after the effective date of this article, properties meeting such exemption requirements are replatted, resulting in the generation of flows in excess of the amount of EDUs for which an exemption was granted, such properties shall only be required to pay an impact fee amount equal to the number of EDUs generated in excess of the number of EDUs exempted.

(c) Properties located within the Lackland City Water Company Medio Creek Plant

This section protects prior rights established for certain properties located within the Lackland City Water Company Medio Creek Plant permitted area for sewer service and for which sewer service collection and/or treatment from Lackland City Water Company had been formally committed prior to December 3, 1991. Such protection of prior rights in the form of an exemption from the requirement to pay an impact fee is applicable to properties which prior to December 3, 1991 met all the following criteria:

- (1) The property was located within the area covered by the Lackland City Water Company Certificate of Convenience and Necessity (CCN) No. 20274 issued by the Texas Water Commission and Texas Water Commission Permit No. 10827-03.
- (2) The property was covered by a contract with the Lackland City Water Company which was subsequently assumed in part by the City of San Antonio pursuant to an Asset Purchase Agreement between the City of San Antonio and the Lackland City Water Company.
- (3) The property was designated to receive a certain amount of committed capacity in an off-site line pursuant to an assumed Lackland contract and such off-site line was constructed, completed and accepted (necessary for exemption to collection fee component) and/or was designated to receive a certain amount of committed treatment capacity from Lackland through the purchase of treatment certificates (necessary for exemption to treatment fee component). In order to receive an exemption the developer must provide the appropriate documentation indicating that he owns both the property

and the accompanying capacity described in the contracts and certificates which are the subject of this section.

The board shall determine and keep records of properties eligible for an exemption under this section. The board's records shall reflect the amount of collection and/or treatment capacity committed to a property for which an impact fee is not required. Such exemptions may be utilized at the time of platting/replatting of the property. In the event the developer of such property may disagree with the records of the board, he may both examine the records of the board pursuant to the Open Records Act and supply additional information to the CEO/President or his designated representative to show evidence that an exemption for additional capacity should be granted. In the event the CEO/President or his designated representative does not find such evidence sufficient to grant an additional exemption, the developer shall follow the variance procedures set forth herein.

Commentary: The purpose of this subsection c is to protect prior rights granted by the Lackland City Water Company and subsequently assumed by the board. The City of San Antonio entered into an Asset Purchase Agreement with the Lackland City Water Company pursuant to Ordinance 74492 dated October 3, 1991. Such purchase was completed December 3, 1991. The City, and subsequently the board assumed certain obligations to provide sewer service under the following contracts:

- *Contract for Construction and Conveyance of Water and Sanitary Sewer Facilities and for Providing Water and Sewage Service between Lackland City Water Company and J. H. Uptmore and Associates Inc. dated May 8, 1981.*
- *Contract for Construction and Dedication of Sanitary Sewer Facilities and for Providing Sewage Services between Lackland City Water Company and Southwest Ranch, Ltd dated July 19, 1983 Contract to Provide Wastewater Treatment Service between Lackland City Water Company and Westcreek Utility Company, Inc. dated August 24, 1984.*
- *Contract for Construction and Conveyance of sanitary Sewer Facilities and Providing Sewage Services between Lackland City Water Company and Homecraft Land Development Inc. and Oak Creek Environmental Management Inc., as Developer dated August 8, 1985.*
- *Wastewater Utility Service Contract between Lackland City Water Company and United States of America Lackland Air Force Base Training Annex dated August 1, 1988, as amended.*

Former Section 35-4262 of this Code which provided for the extension of sewer mains to single family residential lots platted prior to July 6, 1970, is not altered by this article.

(d) Vested rights.

(1) Creation

Vested rights to sanitary sewer treatment and/or collection capacity shall be granted by the board for developments which have met the requirements either under the provisions of this article or under the regulations which were in effect prior to the effective date of this article. Once the board accepts an impact fee, a vested right in sanitary sewer facilities is created for the purchasing developer and that vested right becomes an appurtenance to the property being served.

(2) Minimum capacity

Vested rights for up to four (4) equivalent dwelling units (EDUs) per net acre may only be transferred or assigned as part of a real estate transaction in which the property being served is

itself transferred. Vested rights as represented by sewer capacity in excess of four (4) EDUs per net acre may be either transferred or assigned as part of a real estate transaction in which the property being served is itself transferred, or, with the approval of the city council, assigned for use by another property.

(3) Fee payment

While vested rights to either treatment or collection capacity will be recognized under the conditions set forth herein, the developer must pay (either in the form of cash or credits) the fully assessed impact fee, or sewer platting fee levied prior to the effective date of this article, before the board shall allow wastewater flows from the on-site system of a development to be discharged into the off-site sewer system.

(4) Board recognition

The board recognizes vested sewer rights as follows:

A. Collection system capacity

A developer has a vested right to the sanitary sewer collection system capacity in an off-site sewer line serving his development if the developer has paid the collection component of the sewer platting fee or impact fee, or its equivalent, either in the form of a direct payment to the board or by earning impact fee credits; by having paid for the equivalent of the estimated construction cost of the off-site sanitary sewer capacity at a cost which at least equals the collection fee component he otherwise would have paid at the time of plat approval; or by having paid an acreage fee.

A. Treatment system capacity

A developer has a vested right to the sanitary sewer treatment system capacity at a wastewater treatment plant serving his development if the developer has paid the treatment component of the sewer platting fee or impact fee, or its equivalent, either in the form of a direct payment to the board or by earning impact fee credits; or by having paid for the equivalent of the estimated construction cost of treatment facilities at a cost which at least equals the treatment component he otherwise would have paid at the time such payment is required under this article.

(5) Flows from other developments.

The board reserves the right to connect wastewater flows from other developments to on-site and/or off-site sanitary sewer systems which serve existing developments, regardless of whether such systems were oversized to accommodate the additional wastewater flows. However, in order to preserve the vested rights of the existing development, the board commits to the following:

- A. The board shall maintain records regarding a developer's vested rights in sanitary sewer systems. In the event the developer would exceed those rights as a result of any subsequent platting or replatting of property, the board shall have the right to refuse to accept the excessive flows into the board's sanitary sewer system or to assess the developer the appropriate additional impact fee.
- B. The board retains exclusive ownership of the capacity in all sanitary sewer facilities under its control. The board shall, however, continue to serve a development for which impact fees or platting fees have been paid by recognizing the vested rights of the developer. The developer shall not be denied service solely on the basis that the remaining sanitary sewer capacity for a given

development is insufficient to accommodate the flows of anticipated development when such insufficiency is the result of the board connecting other development generated flows to the sanitary sewer system serving the developer's property.

- C. The board acknowledges its obligation to guarantee a developer's vested right to on-site and/or off-site sanitary sewer capacity serving his property in order that the developer may achieve reasonable, timely, and complete platted development of his property.

(6) Use of another's vested right

When a subsequent developer wishes to utilize sanitary sewer capacity which has already been recognized as a vested right in accordance with this article, the board may permit the developer to utilize that capacity only if the developer meets all of the conditions listed below. The subsequent developer shall enter into a reserve capacity agreement with the board agreeing that the board shall reserve capacity in a future capital improvements project, with the added provision that the capital improvement would serve his development at such time as the board determines sanitary sewer demand in the service area warrants the construction of additional treatment and/or collection capacity. The subsequent developer shall further agree not to require the board to construct the additional treatment and/or collection capacity in accordance with the timing requirements specified in V.T.C.A., Local Government Code Chapter 395. Prior to the execution of the agreement by the board, the subsequent developer shall pay the required collection and/or treatment component of the impact fee in accordance with the rate schedule in Exhibit E.

(7) Transferability

Vested rights, once established in accordance with this subsection (d), are not transferable but may be assigned subject to the limitations set out in subsection (d)(2), above.